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In re Application of
Van Ginneken
Application No. 10/828,547
Filed: April 19, 2004
Attorney Dck't. No. N/a

: **OFFICE OF PETITIONS**
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: ON PETITION
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This is a decision on the petition filed March 9, 2006, requesting (1) under 37 CFR 1.103 suspension of prosecution for 6 months, or, in the alternative, (2) under 37 CFR 1.183, waiver of the rules and suspension of prosecution for the duration of pending litigation, which is being treated by this office only under the provisions of 37 CFR 1.183.

The petition considered only under 37 CFR 1.183 is dismissed without prejudice to renewal.

Petitioner, the current assignee of the entire interest, asserts that final resolution of the inventorship and ownership issues will assist in the examination of this application, and now, as the third party petitioner (and petitioner's opposition in the litigation) did in the petition filed March 4, 2005, seeks suspension of prosecution *pendente lite*. However 37 CFR 1.103, sub-sections (a), and (d) would appear to provide an adequate remedy (respectively, initial and renewed requests for suspension of up to 6 months, or examination deferral for up to 3 years) for the circumstances of this case. The USPTO will not normally resort to an extraordinary remedy under 37 CFR 1.182 or 1.183 if the rules of practice and the procedures before the USPTO already provide an avenue for the requested relief. See Cantello v. Rasmussen, 220 USPQ 664, 664 (Comm'r Pats. 1982). As such, it does not appear, at this time, that there exists an "extraordinary situation", such that "justice requires" extraordinary relief and intervention by this office. Nevertheless, this dismissal is without prejudice to renewal of the petition under 37 CFR 1.183 by petitioner should the provisions of § 1.103 become inadequate.

This application is being brought to the attention of the Technology Center for treatment of the petition under the provisions of 37 CFR 1.103.

Inquiries related to this decision should be directed to the undersigned at (571) 272-3217.

Brian Hearn
Petitions Examiner
Office of Petitions